

Res 170

Dane County Contract Cover Sheet

Dept./Division	Airport/Administration	Contract # <small>Admin will assign</small>	13778
Vendor Name	Smarte Carte, Inc.	Addendum	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Vendor MUNIS #	9837	Type of Contract	
Brief Contract Title/Description	Lease of Space in the Airport Terminal for Eight Massage Chairs.	<input type="checkbox"/>	Dane County Contract
Contract Term	08/01/2019 - 07/31/2024	<input type="checkbox"/>	Grant
Total Contract Amount	\$ 12.5% of gross proceeds	<input type="checkbox"/>	County Lessee
		<input checked="" type="checkbox"/>	County Lessor
		<input type="checkbox"/>	Intergovernmental
		<input type="checkbox"/>	Purchase of Property
		<input type="checkbox"/>	Property Sale
		<input type="checkbox"/>	Other

Purchasing Authority	<input type="checkbox"/> \$10,000 or under – Best Judgment (1 quote required)	
	<input type="checkbox"/> Between \$10,000 – \$36,000 (\$0 – \$25,000 Public Works) (3 quotes required)	
	<input type="checkbox"/> Over \$36,000 (\$25,000 Public Works) (Formal RFB/RFP required)	RFB/RFP #
	<input type="checkbox"/> Bid Waiver – \$36,000 or under (\$25,000 or under Public Works)	
	<input type="checkbox"/> Bid Waiver – Over \$36,000 (N/A to Public Works)	
	<input checked="" type="checkbox"/> N/A – Grants, Leases, Intergovernmental, Property Purchase/Sale, Other	

MUNIS Req.	Org Code	Obj Code	Amount	\$
Req #	Org Code	Obj Code	Amount	\$
Year	Org Code	Obj Code	Amount	\$

Resolution	A resolution is required if the contract exceeds \$100,000 (\$40,000 Public Works). A copy of the Resolution must be attached to the contract cover sheet.			
	<input type="checkbox"/> Contract does not exceed \$100,000 (\$40,000 Public Works) – a resolution is not required.			
	<input type="checkbox"/> Contract exceeds \$100,000 (\$40,000 Public Works) – resolution required.	Res #	170	
	<input checked="" type="checkbox"/> A copy of the Resolution is attached to the contract cover sheet.	Year	2019	

Contract Review/Approvals				
Initials	Dept.	Date In	Date Out	Comments
MG	Received by DOA	8/7/19		
Co	Controller		8/13/19	
Cog	Purchasing	8/14/19	8/14/19	
	Corporation Counsel	8/9/19	8/9/19	
	Risk Management	8/9/19	8/9/19	
	County Executive			

Dane County Dept. Contact Info		Vendor Contact Info	
Name	Rodney Knight, Airport Counsel	Name	Smarte Carte - General Counsel
Phone #	(608) 246-3338	Phone #	
Email	knight@msnairport.com	Email	
Address	4000 International Lane Madison, WI 53704	Address	4455 White Bear Pkwy St. Paul, MN 55110

Certification: The attached contract is a:	
<input type="checkbox"/>	Dane County Contract <u>without</u> any modifications.
<input checked="" type="checkbox"/>	Dane County Contract <u>with</u> modifications. The modifications have been reviewed by: Rodney Knight, Airport Counsel
<input type="checkbox"/>	Non-standard contract.

Contract Cover Sheet Signature

Department Approval of Contract		
Dept. Head / Authorized Designee	Signature	Date
	<i>Kimberly Jones</i>	7/31/19
	Printed Name	
	Kimberly Jones, Airport Director	

Contracts Exceeding \$100,000

Major Contracts Review – DCO Sect. 25.11(3)

Director of Administration	Signature	Date
	Comments	
Corporation Counsel	Signature	Date
	Comments	

**AUTHORIZING EXECUTION OF A LEASE FOR THE OPERATION OF A MASSAGE
CHAIR CONCESSION AT THE DANE COUNTY REGIONAL AIRPORT**

Smarte Carte, Inc. and the Dane County Regional Airport have negotiated a lease under which Smarte Carte, Inc. will lease space in the Airport terminal for eight massage chairs. Under the terms of the five year non-exclusive lease, Smarte Carte will be responsible for all aspects of the ownership, installation, operation, management, and maintenance of the massage chairs located in the Airport terminal. Smarte Carte will pay rent in the amount of 12.5 % of the gross proceeds earned from its operation of the Airport massage chair concession.

NOW, THEREFORE, BE IT RESOLVED that the Dane County Executive and the Dane County Clerk are authorized to execute a lease pursuant to which Smarte Carte, Inc. will operate a massage chair concession service at the Dane County Regional Airport, as set forth above.

13778

LEASE NO. DCRA 2019-04

LESSOR: DANE COUNTY, WISCONSIN

LESSEE: SMARTE CARTE, INC.

Massage Chair Concession Lease

Dane County Regional Airport
Madison, Wisconsin

Lease No. DCRA 2019-04

This Lease No. DCRA 2019-02 (the "Lease") is made and entered into by and between Dane County, Wisconsin ("County"), a Wisconsin quasi-municipal corporation, and Smarte Carte, Inc. ("Company"), a business entity organized under the laws of the State of Minnesota, and shall be effective on the date it is fully executed by both parties.

WITNESSETH:

WHEREAS County is the owner of certain property located in the City of Madison, Wisconsin, known as the Dane County Regional Airport (the "Airport"); and

WHEREAS Company is in the business of providing massage chair concession services and desires to enter into a lease with County authorizing Company to provide such services to users of the Airport; and

WHEREAS County deems it advantageous to County and users of the Airport to grant Company the right to conduct its massage chair concession business at the Airport upon the terms and conditions hereinafter set forth;

NOW, THEREFORE, County and Company do agree as follows.

1. Premises. County hereby leases to Company space at the Airport for the location of two massage chairs in the "Meeters and Greeters Lounge" on the first floor level of the Airport Terminal and space for six massage chairs on the second floor concourse level of the Airport Terminal (collectively, the "Premises") as depicted in Exhibit A attached to this Lease. All massage chairs shall be positioned in pairs. The allocation of additional or different space for the placement of Company's massage chairs is subject to the written approval of the Airport Director.
2. Lease Term and Termination Prior to Expiration. The term of this Lease shall be five years, commencing August 1, 2019 and terminating on July 31, 2024. Company shall remove its massage chairs from the Airport by the expiration or earlier termination of this Lease. In the event Company's massage chairs are not removed from the Airport as required herein, the massage chairs shall be deemed to be abandoned and County shall have the right to remove the chairs from the Premises and dispose of them as County sees fit. All costs of such removal and disposal shall be borne by Company and full payment to County therefor shall be due within thirty days after County delivers to Company a bill for costs incurred for such removal and disposal.
3. Use. Company is hereby granted the right to use the Premises for the provision of massage chair concession services under the terms and conditions set forth herein, which operation shall at all times be in compliance with federal, state, and local laws and regulations, and directives of the Airport Director. County shall not provide or permit the installation of cost free massage chairs at the Airport.

4. Reporting and Payment of Rent. In consideration for the rights granted under this Lease, Company shall, by the twentieth day of each calendar month during the term of this Lease, commencing as of September 20, 2019, and by the twentieth day of the calendar month following the expiration or termination of this Lease, pay to County a sum of money equal to twelve and one-half percent of Company's Gross Proceeds attributable to the operation of Company's massage chair concession business at the Airport during the preceding calendar month or, in the case of the first payment hereunder, since the effective date of this Lease. For purposes of this Lease and for any period of determination, Gross Proceeds means all revenue collected by Company for the use of Massage Chairs at the Airport, minus credit card fees, and sales, excise or other taxes or charges imposed on such revenue by federal, state or local taxing authorities, and paid by Company. With each payment submitted to County, Company shall provide a true and correct statement of accounting relating to the Gross Proceeds received by Company through its massage chair concession operations at the Airport during the period covered by the payment submitted with the accounting. Payment of rent shall be by check made payable to Dane County, Wisconsin. Rent and the statement of accounting required hereunder shall be provided to County at the Office of the Airport Director, 4000 International Lane, Madison, Wisconsin 53704, such that they are received by the close of business on the due date. Rent not received within five days of the due date shall incur interest at the rate of one and one-half percent per month from the due date until paid in full.

5. Massage Chairs and Maintenance. In each of the four locations specified in Section 1 above, Company shall at its sole expense maintain in good working order and attractive condition acceptable to the Airport Director a pair of massage chairs of the type and color depicted in Exhibit B, attached to this Lease. Each massage chair shall accept one and five dollar bills and be capable of processing credit card transactions. Company shall maintain, repair, or replace a massage chair within three days after receipt of notice from County specifying the location of the chair in need of service and the type of service required. In the event County is informed that an Airport user paid to use a massage chair and the chair failed to operate, County shall notify Company thereof, providing contact information regarding the individual involved and the amount claimed to have been paid for the massage service that was not received. Company shall reimburse or credit the individual identified in the foregoing notice within seven days of receipt of the notice or otherwise resolve the matter to the satisfaction of the Airport Director. Notice to Company provided under this section shall be to Smarte Carte Support Services at 800-838-0805, or such other contact as Company may identify in writing provided to the Airport Director. In the event Company fails to comply with the requirements set forth in this section, and the noncompliance is not remedied within five days after receipt of notice from County specifying the nature of the default, County shall have the right to terminate this Lease without further notice.

6. Massage Chair Use Fee. Company shall charge massage chair use fees of no more than the following: \$2.00 for seven minutes, \$3.00 for eleven minutes, \$4.00 for fifteen minutes, and \$5.00 for nineteen minutes. The massage chair use fee may be adjusted upon written approval of the Airport Director, based upon a showing that the adjusted rent fee is consistent with Company's operations at other airports.
7. Electric Service. County shall provide electric service terminating at a location adjacent to each pair of massage chairs operated under the provisions of this Lease, and shall pay for electric service used in the operation of said massage chairs. Company shall be responsible for securing and maintaining the means to provide wireless credit card transactions for the use of each massage chair.
8. Right of Ingress and Egress. Company shall have the right to access the Premises through the Airport in accordance with all applicable laws, regulations, rules, directives of the Airport Director, and Airport policies and security programs. Company shall at all times during the term of this Lease have at least one employee, with Airport security clearance to access the second floor concourse level of the Airport Terminal, available and capable of timely maintaining the massage chairs operated hereunder.
9. Untenantable Premises. If the Premises are damaged so as to render the Premises untenantable, but capable of being repaired within thirty days, the same shall be repaired by County at its cost and expense, and rent and fees payable by Company hereunder shall be suspended until such time as the Premises shall be fully restored, provided that, if said damage is caused by the negligent or wrongful act or omission of Company, Company's employees, agents, contractors or suppliers, or a malfunction of massage chairs used by Company, rent and fees shall not abate and Company shall be responsible for all damages resulting from such malfunction or negligent or wrongful act or omission. In the event the Premises are damaged by fire or other casualty such that the Premises will remain untenantable for more than thirty days, Company may terminate this Lease effective as of the date the Premises become untenantable. Notwithstanding the foregoing, if said damage is caused by the negligent or wrongful act or omission of Company, Company's employees, agents, contractors or suppliers, or a malfunction of massage chairs used by Company, the Lease shall not so terminate and Company shall be responsible for all damages resulting from such malfunction or negligent or wrongful act or omission.
10. Authority of Airport Director. With respect to enforcement, modification, amendment, termination, approval and any other matter affecting or arising from the terms of this Lease, the Airport Director is authorized to act on behalf of County.
11. Ownership of Massage Chairs. Ownership of the massage chairs placed by Company on the Premises shall be retained by Company during the term of this Lease.

12. Airport Improvement. County shall have the right to develop or improve the Airport and surrounding County owned land as it sees fit, regardless of the desires or views of Company, and without interference or hindrance by Company.
13. Modification of Massage Chair Locations. Company understands that County anticipates that the Airport Terminal may undergo significant renovation during the term of this Lease, and that some of the renovation work may require the relocation of massage chairs from the areas depicted in Exhibit A. In the event massage chairs are displaced due to terminal renovation, County shall endeavor to provide reasonable replacement locations with exposure to terminal users at least equivalent to the space originally assigned hereunder, but shall have no further obligations to Company.
14. Military Provision. During time of war or national emergency as determined by Congress or the President of the United States, County shall have the right to lease any part of the Airport to the United States or the State of Wisconsin, and any agencies thereof, for military or governmental use and, if any such lease is executed, the provisions of this instrument insofar as they are inconsistent with the provisions of the lease to the federal or state government shall be suspended, and Company shall be without recourse therefor against County.
15. Subordination. This Lease shall be subordinate to Federal Aviation Administration ("FAA") regulations, the provisions of any agreement between County and the United States or State of Wisconsin related to the development, operation or maintenance of the Airport, the execution of which agreement has been or may be required as a condition precedent to the availability or expenditure of federal or state funds for the development, operation or maintenance of the Airport. Should the effect of such regulation or agreement be to substantially destroy the value of rights granted under this Lease, Company shall have the right to terminate this Lease, but shall have no other recourse against County.
16. Airport Protection Clause. County hereby reserves for the use and benefit of the public the right to pursue and permit all operations of the Airport, including the right of aircraft to fly in the airspace overlying the Leased Premises and to cause such noise and vibration as may be inherent in the operation of aircraft on or in the vicinity of the Airport. Company shall not use or permit the use of the Premises in any manner that interferes with communication between the Airport and aircraft, or in any manner that interferes with or creates a hazard to aviation or operations of the Airport, its tenants, or others using the Airport, as such is determined by the Airport Director.
17. Use Restrictions. County reserves the right to remove or prevent Company from placing, erecting, or permitting to be placed or erected, any structure, device, equipment, material or other item on or about the Premises which County determines would limit the efficiency or usefulness of the Airport, constitute a hazard to aviation, violate an FAA directive or regulation, or present a danger or inconvenience to Airport users.

18. Conditions of Premises. Company accepts the Premises in the condition thereof on the effective date of this Lease, and shall at all times maintain the Premises in such condition, normal wear and tear excepted.
19. Alterations. Company shall not make alterations or attach fixtures to the Premises unless specifically authorized herein or by advance written approval of the Airport Director.
20. Signs. Company shall not place, install or erect in or about the Airport or Premises signage, notices, banners, posters or displays of any kind unless authorized herein or by advance written approval of the Airport Director.
21. Nondiscrimination and Accessibility. Company does hereby covenant and agree that, in accordance with chapter 19 of the Dane County Code of Ordinances and Chapter 111 of the Wisconsin Statutes, (1) no person on the grounds of age, race, ethnicity, religion, color, gender, disability, marital status, sexual orientation, national origin, cultural differences, ancestry, physical appearance, arrest or conviction record, political beliefs, military participation, or membership in the national guard, state defense force or any reserve component of the military forces of the United States shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination with respect to the furnishing of services on or from the Premises and the conduct of activities authorized or required under this Lease; (2) that Company shall conduct all activities authorized or required under this Lease in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, and 14 CFR Part 152, Subpart E, as said regulations may be amended; and (3) that Company shall comply with all accessibility requirements of the Americans with Disabilities Act and all other applicable federal, state and local laws, rules, regulations and ordinances.
22. Disadvantaged Business Enterprises. It is County's policy to ensure that Airport Concession Disadvantaged Business Enterprises ("ACDBEs"), as defined in 49 CFR Part 23, and other small businesses are to the maximum extent practicable provided opportunities to participate in Airport concession activities. Company shall at all times while performing activities authorized under this Lease be in compliance with laws and regulations addressing affirmative action and ACDBE participation in such activities. Company shall provide full responses to County's affirmative action or ACDBE related inquiries and data collection requests within 30 days of receipt of such inquiries or requests.
23. Company to Pay Fines or Forfeitures. Company shall pay any fines or forfeitures levied upon County or the Airport through enforcement of any federal, state or local law, regulation, rule or policy based on the acts or omissions of Company, Company's employees, agents, or contractors.

24. Indemnification and Hold Harmless. Company is and shall be deemed to be an independent contractor and operator exclusively responsible for Company's own acts or omissions. Company shall indemnify, hold harmless and defend County, and its officers, agents and employees from and against all claims for losses, costs, attorney fees, expenses and damages arising out of, resulting from or relating to any loss of or damage to any property or business or any injury to or death of any person, where such loss, damage, injury, or death actually or allegedly arises, whether directly or indirectly, wholly or in part, from (a) any action or omission of Company, Company's employees, agents, contractors or suppliers while on Airport property; or (b) the exercise of the rights granted herein by Company, Company's employees, agents, contractors or suppliers. Company's obligation of indemnification, as set forth herein, shall not apply to damages or liability resulting from the acts or omissions of County. The indemnification provided hereunder shall survive the expiration or earlier termination of this Lease.
25. Insurance Requirements. Company shall, by the effective date of this lease, obtain Comprehensive General Liability Insurance for bodily injuries or death arising out of any one accident or from other cause, in a minimum sum of \$1,000,000 per occurrence for bodily injury and, in addition, shall obtain Comprehensive Property Damage Liability Insurance in a minimum sum of \$1,000,000 for property damage arising from any one accident or other cause. Insurance so provided shall be deemed Primary. Company shall maintain said insurance with insurance companies authorized to do business in the State of Wisconsin and approved by County. All policies providing coverage as required herein shall name County, its officers, agents and employees as additional insureds. Company shall within 10 days of the effective date of this Lease provide County with a certificate or certificates of insurance evidencing the insurance coverage required under this Lease. Each insurance policy obtained hereunder shall contain a provision that Company's insurer shall send to County written notice of cancellation of said policy at least 10 days in advance of the effective date thereof. Company shall maintain all insurance coverage required hereunder at all times it is conducting operations at the Airport.
26. Assignment and Subleasing. Company shall not at any time assign this Lease.
27. Taxes, Fee, Permits and Licenses. Company shall obtain all permits, certifications and licenses required to conduct Company's activities at the Airport. Company shall pay as they become due any and all taxes, fees, assessments or other governmental charges, however denominated, imposed or based, upon Company's property, equipment or activities at the Airport.
28. Notice of Violation. Company shall give prompt notice to County of any notice or warning Company receives regarding the violation of any law, regulation, requirement or order of any public authority with respect to the Premises or Company's activities at the Airport.

29. Waiver. No acceptance by County of rents, fees, charges or other payments or waiver by County of any default on the part of Company in performance of any of the terms, covenants or conditions of this Lease shall be construed to be a waiver by County of any other or subsequent default in performance of said terms, covenants and conditions, or of any right on the part of County to terminate this Lease. The term of this Lease may be renewed or extended only by written agreement executed by both parties hereto. The rights of termination set forth in this Lease shall be in addition to any rights and remedies that County has at law or equity consequent upon breach of this Lease.
30. Entire Agreement and Invalid Provisions. All terms and conditions with respect to this Lease are expressly contained herein, and each of the parties hereto agrees and specifically acknowledges by execution of this Lease that there has been no reliance on any verbal promise, representation or warranty made by the other party, or the party's employees or agents with respect to this Lease or any of the matters and rights addressed herein. In the event any covenant, condition, or provision herein is held to be invalid by any court of competent jurisdiction, such invalidity shall not affect or invalidate any other covenant, condition or provision herein.
31. Time is of the Essence. With respect to performance of all terms and conditions of this Lease by each of the parties hereto, time is of the essence. The covenants and conditions set forth in this Lease are intended to be binding upon the parties and are not to be construed as mere recitals
32. Notices. Notices and communications hereunder shall be sufficient and effective as of the date of postmark if sent by regular mail, postage prepaid, addressed to:

LESSOR: Airport Director
Dane County Regional Airport
4000 International Lane
Madison, WI 53704

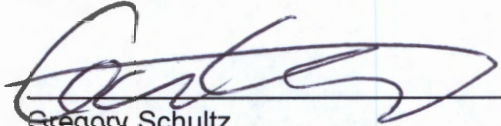
LESSEE: General Counsel
Smarte Carte, Inc.
4455 White Bear Parkway
St. Paul, MN 55110-7641

Or to such other address as either party may provide to the other in writing

33. Execution in Counterparts, Copies. The parties may evidence their agreement to be bound by the terms of this Lease upon one or several counterparts of this document, which together shall constitute a single instrument. A photocopy, facsimile, or electronic copy of this Lease shall have the same effect for all purposes as an original.

IN WITNESS OF THE FOREGOING and with the intent to be bound thereby, County and Company have caused this Lease to be executed on the dates indicated below.

FOR SMARTE CARTE, INC.



Gregory Schultz
Vice President

Date: 7/19/19

FOR DANE COUNTY

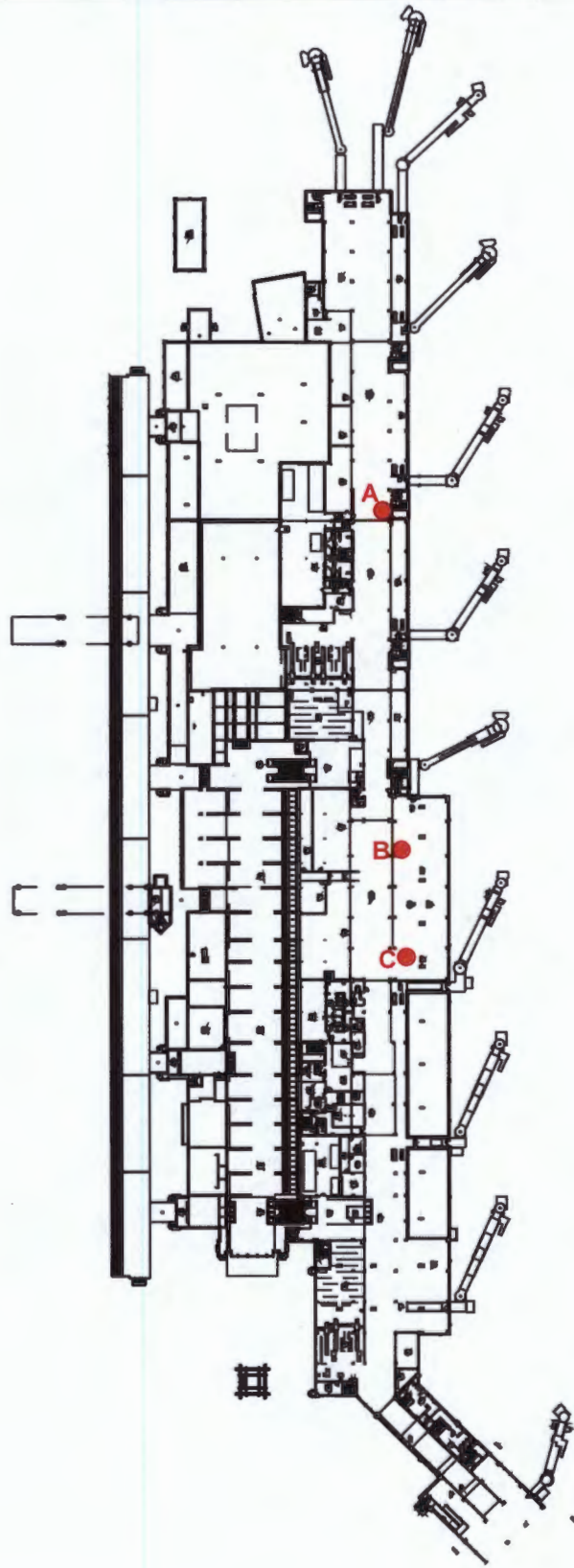
Joe Parisi
Dane County Executive

Date: _____

Scott McDonell
Dane County Clerk

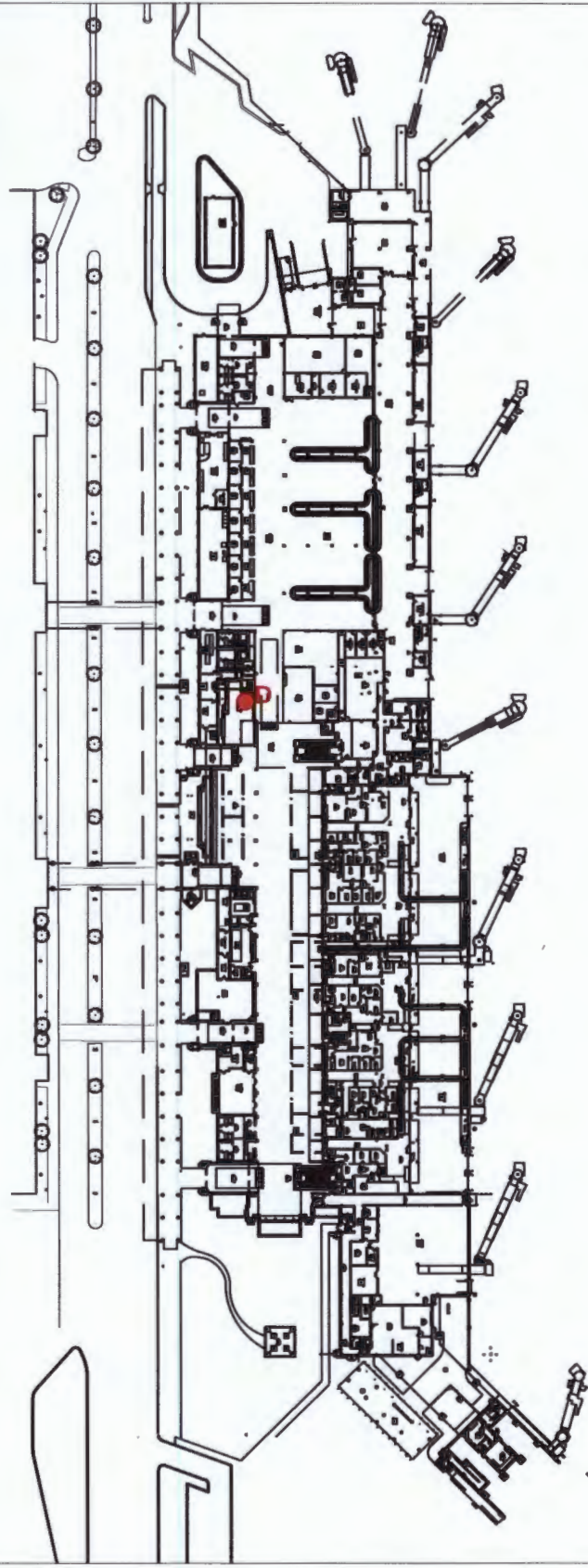
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AIRPORT TERMINAL
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AIRPORT TERMINAL
FIRST FLOOR
CONCOURSE LEVEL



LED Light



Credit Card Payment



USB Phone Charger



The benefits of Smarte Carte's new massage chair program include:

- Customizable massage chair design and environment options to fit the aesthetic of your location
- Extensive experience in the daily operations and management of massage chairs
- Centralized support staff with expertise in engineering, design, planning, analytics and account management
- Accepts cash and credit
- Massage chair vending mechanisms that are user friendly
- Competitive revenue sharing opportunities



www.smartecarte.com

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EXHIBIT B
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